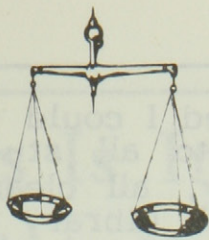


LAW LIBRARY
OCT 23 1984
UNIVERSITY

Quid Novi



VOL. V NO. 6

McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITE MCGILL

October 17, 1984
17 octobre, 1984

THE LIMITS OF LAW

Noise in the Library

by Dean Roderick Macdonald

I indicated two weeks ago in *Quid Novi* that this week I would continue my discussion of legal education with a short comment on sources of law and legal justification. Nevertheless, the first event which permits me to write a short commentary has now occurred and, therefore, I will defer treating this second theme in legal education for at least another week. The question I wish to address presently is that of noise in the library.

Library Noise

Last week, I received a petition which exhorted me to "do something" about the problem of noise in the Library. The petition was well drafted; it clearly identified various aspects of the noise problem; and it was signed by a significant number of students. In other words, the petition was a fine example of legal craftsmanship.

Let me say first that I am in total agreement with those who are dissatisfied with the level of noise in the Library. What is more, the failure of certain individuals to respect the no smoking areas, the disinclination of others to refrain from bringing beverages and food into the Library and the reluctance of the University either to install openable windows or to provide for sufficiently

powerful air circulation units, means that the discomfort index for those who wish to study has reached an almost intolerable level.

Of course, certain structural features of the Library exacerbate the problem. Client service areas -- by definition noisy -- are spread out: the circulation desk is on the fourth floor, the reserve desk on the fifth.

The central staircase acts as a chimney for noise so that it is impossible to find a quiet floor. The fact that books are stacked almost to the roof and that shelves often go right to the carrels at the sides of the building means that noise is trapped and reverberates. Further, the fact that there are approximately 540 undergraduate students using a building designed for 380 people does

Cont'd on p. 2

GOSSIP WITH 'GOOSE'



par Julie T. LaTour

Chers jurisconsultes,

Voici le premier volet d'une série d'entretiens bilingues et bilingues avec certains des membres les plus influents de notre digne faculté. Aujourd'hui, nous rencontrons l'honorable Richard Jake Goossen, représentant des étudiants en droit au Sénat de l'Université. Monsieur le Sénateur a modestement accepté d'être tutoyé pour les besoins de l'entrevue et de la populace.

Julie: M. Goossen, comment expliquez-vous votre importante victoire lors des élections estudiantines, l'an passé?

Rick: There were numerous factors which resulted in an overwhelming victory: a massive grass-roots organization, the support of special interest groups, and financing from Forum National. Also, no one ran against me.

Julie: Merci Rick. Mais, pourquoi avoir choisi le Sénat?

Rick: I've chosen a career in donuts. I started off a Donut Manager for Forum National, but fell from grace when John Crosbie almost choked when inhaling a "croustille". The Senate, known for its fine pastry,

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Noise in the Library: The Limits of Law

Cont'd from p. 1

not contribute to a peaceful working environment.

All of these complaints -- about noise, smoke, food, stale air -- are valid and all need to be dealt with. You were informed in the Quid a couple of weeks ago that the University has struck a Library Space Committee to review the physical resources of the Law Library. The Committee, I trust, will be able to come up with recommendations which can be implemented quickly. In all events, I will keep everyone informed of the activities of this Committee.

On Petitions and Decanal Authority

What is of interest to me here, however, is the fact that a number of students felt that a petition to the Dean would be an appropriate way of dealing with problems in the Library. Now, if it is true that petitions are an effective device for bringing a situation to the attention of the general public is, nevertheless, also the case that they are of limited utility if, (i) they are not directed to a person who has any authority to do anything about the perceived problem or if, (ii) they do not present a problem which is capable of resolution by any person in authority.

Of course, I am not criticizing the students who drafted the petition and presented it to me; it is reasonable to assume that the Dean is responsible for all aspects of life in the Faculty; and in a very real sense I suppose this is true. Yet, as you well know, the Dean has limited resources at his disposal. Presumably, in response to the petition

received I could (i) send a memo to all students, all Faculty, all cleaning staff and all Library personnel telling them to pipe down; (ii) strike a noise committee; (iii) try and identify the most serious offenders and speak to them personally; (iv) hire security guards to go around and tell people to quiet down on pain of being evicted from the Library; (v) close down the Library as an open-stack operation and convert it to a lending Library.

You will note that each one of the above solutions assumes that it is possible to create and enforce a normative system from an authority position which will produce the desired result. Yet, each of us well knows that a memo from the Dean (or any other University Officer) on a matter such as this is so much waste of paper. For example, did you know that since August 1977, the following "policy" has been in effect throughout the University?

Smoking

Smoking is forbidden in all class, seminar and conference rooms, and in the libraries and archives. NO SMOKING is a municipal by-law in rooms open to the public, particularly classrooms and elevators, and a number of other specific areas within the University, for safety reasons.

Since many of the class-rooms are small, staff are urged to consider the plight of those who do not smoke, and the impossible task of trying to clean and maintain the rooms in reasonable condition. Many people within the university and from the general public using

university space have pointed out that it is an intolerable imposition on them if others smoke. For those who must succumb to the tobacco urge there are lobbies and lounges within all buildings which are not designated as NO SMOKING areas.

Members of the staff are requested to ensure that this regulation is followed in areas under their control.

We also know that it would be a highly inefficient expenditure of money to hire security guards to evict noisy students and others from the Library when the Faculty is already strapped for funds. What is more, I can readily imagine letters to the Quid Novi complaining of "fascist" activities by the Dean.

Again, a solution such as converting the Library to closed stacks defeats the whole object of the petition exercise. It is as if, in an overweening concern for preserving the shine on a new car, the owner were to leave it permanently in a garage. Surely, the noise problem does not at present merit such a draconian response.

Finally, to strike yet another committee would be the equivalent of setting up a Royal Commission. It would give the impression of action while accomplishing very little in the short term.

I could, and I have undertaken to the representatives of the petition signers that I would speak to identifiable noise creators among Faculty and staff. I am, however, skeptical that even this will have any major effect,

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The Circus Is In Town!

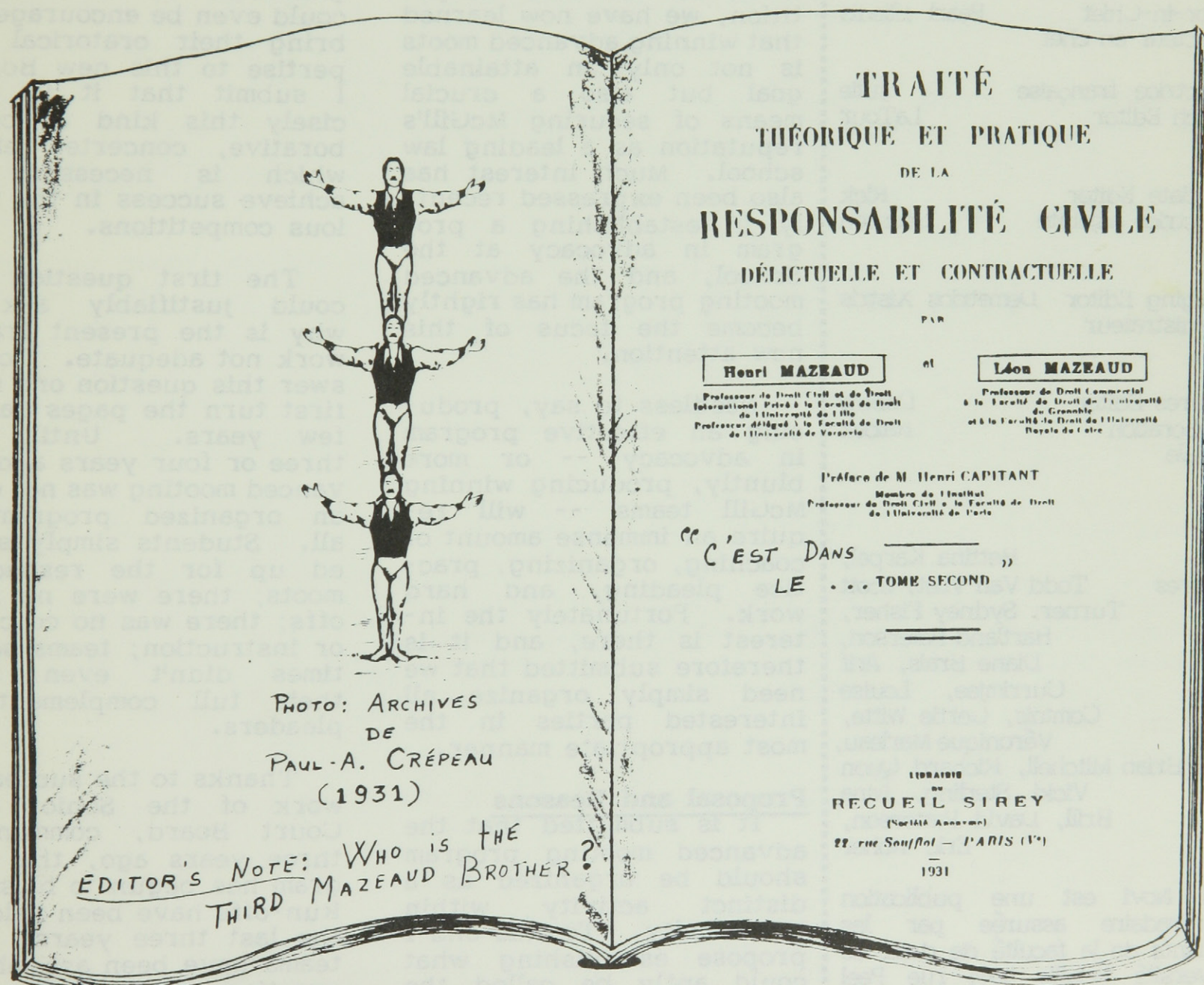
by Tony Abruzzese

The high-wire act of the Mazeaud Brothers has arrived at the law faculty. For years a vintage 1931 photograph of the brothers was camouflaged in Prof. Crépeau's Institute of Comparative Gymnastics. The photo has ultimately surfaced, although there is

ly. Could he be Harold? After all, Harold has been everything else, including an academy winning actor in his role of "E.T." in Skit Nite 1983. Better still, Harold has run as president for the 1984 L.S.A. elections, earning 11 votes and thrashing the likes of Bud Melman.

helps a student find a book....". On second thought, it couldn't possibly be Mr. Li.

Owen Kurtin is a potential candidate. He once attempted to monopolize three-quarters of Skit Nite's budget to build a giant propane-propulsion



a slight problem. Only two brothers, Henri and Léon, are identified. The third, a notable unknown, is said to be or to have been hiding in our faculty under an assumed name.

The search is intense. Where would a long lost Mazeaud brother be found? In the library, quite like-

It turns out that Harold is not the man. He has not sold one copy of the Mazeaud's treatise on civil responsibility. No royalties. And Mr. Li? He made headlines in the first-ever CBC newscast live from Skit Nite 1984. "And the top story this evening", said anchorman Neil Drabkin, "Mr. Li

rocket. He saw a vision of his rocket engulfed in carbon fumes, intertwined with majestic colours from high-intensity light projectors. All in technicolour. But it sounds too delictual and no Mazeaud brother would ever contemplate this. Owen is now gone. He was

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Proposals For Advanced Moot Court Board

by Daniel Gogek

Introduction

within the last two or three years a great deal of interest has been generated in advanced mooting. With last year's first place finish in the Gale Competition, we have now learned that winning advanced moots is not only an attainable goal but also a crucial means of securing McGill's reputation as a leading law school. Much interest has also been expressed recently in establishing a program in advocacy at the School, and the advanced mooting program has rightly become the focus of this new attention.

Needless to say, producing an effective program in advocacy -- or more bluntly, producing winning McGill teams -- will require an immense amount of coaching, organizing, practice pleading, and hard work. Fortunately the interest is there, and it is therefore submitted that we need simply organize all interested parties in the most appropriate manner.

Proposal and Reasons

It is submitted that the advanced mooting program should be organized as a distinct activity within the Faculty. To this end I propose establishing what could aptly be called the "Advanced Moot Court Board". Such a Board could bring together students interested in directing the advanced mooting program with members of the Senior Moot Court Board and members of Faculty. Students who have previously taken part in the advanced moots could bring much experience

to the Board and could help with the coaching of current participants. First and second year students interested in doing an advanced moot in a later year could get involved early by joining the Board. Recent graduates of the Faculty could even be encouraged to bring their oratorical expertise to this new Board. I submit that it is precisely this kind of collaborative, concerted effort which is necessary to achieve success in the various competitions.

The first question one could justifiably ask is why is the present framework not adequate. To answer this question one must first turn the pages back a few years. Until only three or four years ago advanced mooting was not even an organized program at all. Students simply signed up for the respective moots; there were no run-offs; there was no coaching or instruction; teams sometimes didn't even have their full complement of pleaders.

Thanks to the successful work of the Senior Moot Court Board, commencing three years ago, the program has begun to blossom. Run-offs have been held for the last three years; good teams have been assembled; practice pleadings have come to be seen as essential. This recent turn for the better is laudable, but it is submitted that it has created its own problems. It has placed a great strain on the limited resources of the Moot Court Board. Clearly this Board

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Gossip with "Goose"
Cont'd from p. 1

was the next step to the federal Cabinet.

Julie: "Ricky Baby", pourquoi avoir opté pour McGill pour tes études en droit?

Rick: I wanted to meet some wild and crazy French-Canadian blonde-haired girls. I couldn't get into U. de Montréal, so I had to come to McGill.

Julie: Dommage pour toi, Ricky chéri, mais mon vide sentimental est déjà comblé. Quels sont selon toi les problèmes majeurs auxquels les étudiants sont confrontés?

Rick: One major problem has resulted from John Shield's departure. Where can women get copies of a summary for free and men get one for only \$9.95? All other issues (i.e. fee hikes, library space) pale in comparison.

Julie: Rick, je crois que tu es originaire d'un petit patelin perdu en Colombie-Britannique. Quelle est ta sensation à cet égard?

Rick: Life hasn't been easy. But when I get down, I just think how much worse life would be if I was from Toronto.

Julie: Mon chou Rickou, quelle est ta principale préoccupation dans la vie?

Rick: To ensure the Draft Crépeau Code becomes the law of Quebec so that future generations may live in eternal legal bliss and perpetual happiness.

Julie: Mon amour, pardon, Ricky de mon coeur, quelle est ton opinion concernant la récente nomination du Professeur Macdonald au poste de Doyen de la Faculté?

Rick: Great question cutie! I think there could be a better situation: we like the new Dean but he should have kept Brierley's wardrobe (except the glasses!)

Julie: Ricky chéri, Goossen est un nom pour le moins exceptionnel, quelle en est l'origine?

Rick: It's a Dutch name. It is shortened from the original Goosstens -- "goosst" which means "ghost" in Dutch. My forefathers were the original ghostbusters.

Julie: Comme dernière question, M. Goossen, quel est le professeur que vous appréciez le plus au sein de la Faculté?

Rick: The person I respect the most at Law School, for his courage and boldness, is Prof. Klinck. He is the only person who takes pride in being from Alberta. By the way what do you think of this debonnaire professor?

Julie: Je pense qu'il est un professeur exceptionnel. The first time we met, it really "klincked"!

Merci, cher honorable, de ce témoignage mordant! A la semaine prochaine!

CIRCUS

Cont'd from p. 3

also gone while he was here.

Enough about Skit Nite. So where else would one find a high-wire act to give us a clue? Ever see Prof. Grey walk late into a faculty meeting? Chairs rattle. Cacophony in B Major. Administrative details, perhaps.

The search continues. Another clue is apparent from the 1931 Mazeaud trea-

tise. The words "TOME SECOND". Maybe the inscription should have read: "TOME SECOND ETC." In fact, thirty-five more volumes garnish the Mazeaud collection. Imagine what all these volumes would look like if they could only be stacked up, one above the other. Imagine the conceptual beauty of their yellowed, parchment-like pages. And then, it suddenly hit me. The elusive third Mazeaud brother must be in the books. "C'est dans les tomes", said Prof. Crépeau.

Armed with this knowledge, I returned to the law library. To my amazement, I found piles upon piles of volumes, in every corner. Whole collections were put aside, one volume above the other, in the conceptual beauty I had imagined. And behind the piles, there they were. Not one, but hundreds of Mazeaud brothers, performing in a high-wire act they called "MOOTING".

Next Week: "The Crépeau Legacy: A Play in Two Acts"

From Julius Grey's School of Respect for Authority

"This particular rule of evidence dealing with reputation can only be called a great stupidity".

"All this notion of Cartesian certainly in the civil law is a lot of crap".

"It all comes from the unhealthy, stupid respect that most Canadians have for the law".

"This rule about past convictions is an uncommonly stupid rule".

"You must always assume that juries are moronic".

LAWYERS

Cont'd from p. 5

practitioners in major centres is already saturated may decide to pursue other career options.

If the Law Society succeeds in restricting admissions to law schools, the obvious question remains: By what standard is the correct number of entrants to be judged? The Special Committee on Numbers admits that it is "extremely difficult to gauge what number [of lawyers] would be needed in practice five or more years in the future." The fact that economic conditions can change considerably within a short period of time makes it almost impossible to estimate the market's needs. Moreover, the selection of the "correct" number to be admitted would be difficult because it would not be known how many of those entering first year would ultimately engage in practice.

Why were lawyers, academics and policy makers unable to anticipate and prepare for a surplus of legal practitioners in Canada? Some say that this situation should have been predictable: Lawyering is clean work, involves no heavy lifting, and is fairly prestigious. As long as it seemed lucrative, the number of people hoping to enter the profession inevitably swelled. Few people expected the law of supply and demand to prevail for lawyers. But it has. Now that the number of practising lawyers has reached the saturation point, many of those already in the profession are calling for far-reaching changes in order to reduce the competitive pressures. After considering a range of solutions to the problem, the Law Society of Upper Canada

is advocating a restriction in law-school enrollment.

I believe that to reduce the availability of legal education is to take the wrong approach. As a matter of principle, a person who has both the ability and the desire to enter the legal profession or to gain a legal education should not be prevented from doing so by artificially imposed limits. Instead, it is preferable to continue to rely on the market mechanism to make the necessary adjustments in the supply of legal practitioners. While, in the short term, this approach may cause a degree of pain for some lawyers in private practice, in the long term it represents a real gain for legal education and for the profession itself.

Quotable Quote

"Lord Edmund-Davies refers to the preferred Australian position as being dominant". **Mr. Woods**
Civil Procedure IIA

Advanced

Cont'd from p. 4

has its traditional priorities -- the organization of Mooting I, Mooting II, the Student/Faculty Moot and the voluntary moots -- an already considerable task. The creation of a new Board to co-ordinate advanced mooting would help the Moot Court Board to concentrate on these priorities. Moot Court Board members would continue to play an important role in advanced mooting, but by establishing a new Board additional human resources could be attracted to help lessen the burden on individual members.

The attraction of additional talent to the advanced mooting program is

the second fundamental reason for the new Board. Students in the Faculty who have already participated in an advanced moot have garnered invaluable experience. To be successful in the Competitions, present team members should be able to profit from this experience. Former pleaders thus could be encouraged to join the new Board and could assist in a wide range of capacities -- from coaching to taking care of less glamorous but equally important administrative matters. Unless an Advanced Moot Court Board is established (or something similar), it is difficult to envision how these people can participate in a meaningful way.

Structure

I would propose that the Faculty Advisor to the Moot Court Board also be Advisor to the Advanced Moot Court Board. In addition, two students who have already completed one or two advanced moots should be appointed Co-directors of the new Board. The Senior Moot Court Board could appoint a number of its members to the new Board. All students who have previously taken part in an advanced moot (and are not mooting in the current year) would automatically be on the new Board. Any interested student could join the Board. Faculty members interested in advocacy would be approached to join the Board as well.

Conclusion

The time has arrived to give serious thought to the question of how to create a well-organized advanced mooting program which can attract the large number of participants it needs to be truly successful. I hope that you agree with the above proposals, and I would be pleased to discuss them with you.

A SOLDIER'S STORY

Mark Attisha & Todd Van Vliet
on Assignment for the Quid.

In the closing months of World War II a black sergeant is killed in the deep south of the U.S. A black captain, a graduate of Harvard Law, is assigned from Washington to investigate. He meets a world he cannot understand, a world of bigotry in transition as black Americans struggle to participate in the life -- and death -- of G.I. Joe.

Although the montage and methods tend toward the cliché, with flashbacks and "pensive moments" in abundance, the messages are conveyed articulately and not without subtlety. Sergeant Waters, played by Adolph Caesar, so despises the injustices he must face that his hatred turns against his own race. In a drunken rage he realizes the truth as he tells two white officers, "You made me hate myself!" Their reply: "Hey, it ain't our fault you're black".

As he investigates Sergeant Waters' death on that night, the Captain, played by Howard E. Rawlins, Jr., must wade through bureaucratic mire and racial hatred, testing severely his Yankee sense of justice. Here as everywhere else, the law does not blindly measure objective evidence, but takes into account facts colored by the Captain's past, viewed always with reference to his own biases. It is not until he comes to grips with those biases that the truth begins to come crashing through.

It is true that this film owes too much of its style to Hollywood. Yet, its perspective on America is refreshing and it accomplishes what it sets out to do: humanize racial differences, and capi-

talize on America's present optimistic mood. Perhaps it is too much to ask that the book's final comment be included in the film: the unit on which the film was based was wiped out in an American offensive later that year. **Three stars.**

Film on Legal Ethics

Phi Delta Phi

Laurier Inn, the local chapter of the International Legal Fraternity of Phi Delta Phi, is planning an exciting calendar of events for its members and for all law students in the coming academic year. Legal ethics form the cornerstone of our fraternity and it seems only fitting that the agenda gets underway with a film presentation on that very subject.

The film (1½ hours long) includes Judge Eugene Wright (United States Court of Appeal, 9th C.), who speaks on legal ethics from the judge's perspective and a panel discussion chaired by Professor Robert Burt of Yale Law School which explores the idea of the lawyer as "hired gun."

The film will be shown on Wednesday October 17th at 12 p.m. in the Moot Court. It presents some provocative views on our profession and we strongly urge all law students to attend this highly informative event.

Celina Fenster
Exchequer, Laurier Inn

Hallowe'en Party

Anyone interested in organizing a home Hallowe'en Party please contact Jacqui Lacey, Mitchell Brownstein and/or Cheri Bell first. Thanks.

Observations

by Scott Turner

I was leafing through the Oxford Dictionary of Quotations tonight, vainly looking for some snappy bit of wisdom with which to embellish a factum otherwise devoid of intelligence or moral worth, when I came upon the following line from Ovid's Metamorphoses: Chaos, rudis indigestaque moles: a rough and unordered mass. (And, no, my mind did not instantly associate those words with my work. That happened as I wrote these lines.)

Rather, I thought that Ovid's short passage quite aptly described the library these past few days: where everyone has been rushing about doing their best to look harried and overworked, as they wade through mountains of obiter in search of just the right ideas with which to twist logic and reason around to their untenable points of view. And I realized as I watched this process from a guilty perspective, that I have a very strong aversion to the library -- much as I do to television evangelists and unwashed frying pans. The tension in the air, I think, and the mess on the shelves, unleashes within me a fundamental fear of entropy and disorder. It also gives me a rash behind my right knee.

So I avoid the place as much as possible, only venturing through the turnstiles to hastily photocopy a few articles and cases before rushing out again -- with a nod to Harold -- to snatch a few gulps of calmer air, and to make my way back to the quiet sanctuary of my room. Where now I sit contemplating the lesser chaos of my factum, and

Cont'd on p. 10

Mark Your Calendar

November 5th

Forum National presents

The Conference on Minority
Language Rights

Observations

Cont'd

thinking: *Brevis esse laboro, Obscuris fio.* (Or, if I don't get this done by tomorrow, the typist will never have it ready on time.)

Phi Delta Phi Calendar of Events 1984-85

I. Fall Semester

- A. Membership Drive -- October 10-12
- B. Film on Ethics -- October 17
- C. Trip to Indianapolis -- October 19-21
- D. Donut-Eating Contest -- October 24
- E. Banquet to Toronto -- October 26-27.
- F. Movie / Ghostbusters Day -- End October
- G. Hallowe'en Party -- End October
- H. Summary Auction
- I. Theatre / Restaurant Nite -- November 8

II. Winter Semester

- A. Curriculum Vitae Clinic -- January 10
- B. Terry Fox Freezathon -- January 16
- C. Skating at the Rideau Canal -- January 26
- D. Conference on Legal Ethics -- January 30
- E. Extemporaneous Speaking Contest -- February 6
- F. Ski Trip -- End February
- G. Initiation Ritual & Banquet -- March 8
- H. Election of the 85-86 Executive -- March 11

*for members only
+tentative

THIS WEEK UPCOMING EVENTS

Dean's Hot Seat

Thursday, October 18 at 12 noon in the Moot Court Room.

Women and the Law Presents

- D.E.S. Action [speakers and video]
- the effects (on children) of giving D.E.S. to pregnant women
- the law suits now pending
- fighting the abuses of large pharmaceutical companies
- access or non-access to medical files

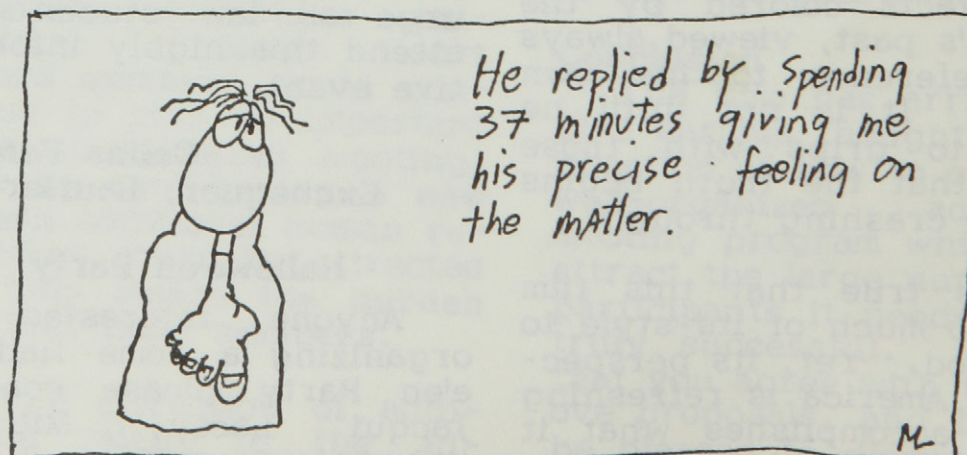
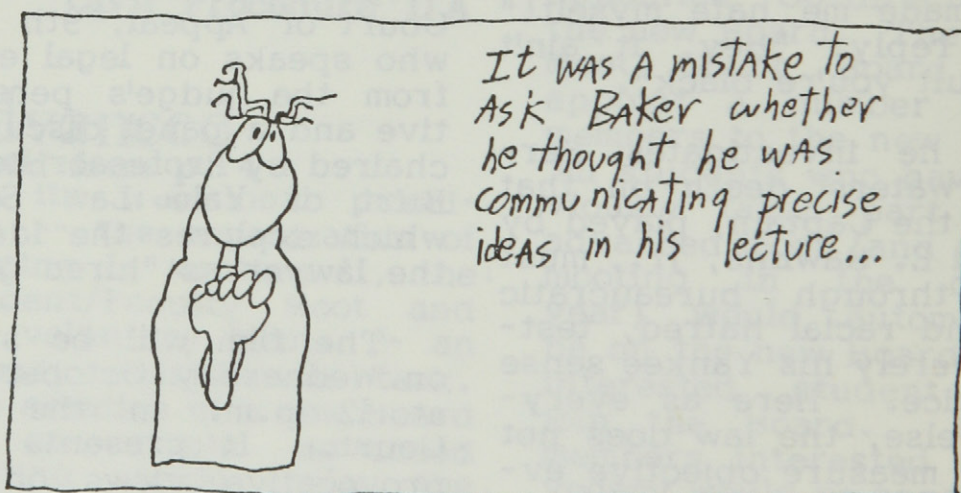
Thursday October 18th
12:00 p.m., Room 200

Behind Closed Drawers

Ever wondered what there is in that file they keep on you in the Dean's office? Or how about your credit rating? All those misdeeds from way back when -- does anyone have it on paper anywhere?

Find out what lies behind the closed drawers in formerly confidential files, if you dare. Next Monday, Tom Riley, a lawyer from Toronto, will talk about the Access to Information Act of Canada and of Quebec.

Monday, October 22
3 p.m.
Common Room



M